

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Promoting Investment in the 3550-3700 MHz)	GN Docket No. 17-258
Band)	
)	

To: The Commission

REPLY COMMENTS OF THE RURAL WIRELESS ASSOCIATION, INC.

The Rural Wireless Association, Inc. (“RWA”)¹ files these reply comments in connection with the Federal Communications Commission’s (“FCC” or “Commission”) request for comment on proposed changes to the rules governing Priority Access Licenses (“PALs”) in the 3550-3700 MHz Band (“3.5 GHz Band”) Citizens Broadband Radio Service (“CBRS”). These proposed changes provide for longer license terms and larger geographic license areas, and license renewal terms and conditions.²

The promotion and expansion of rural broadband deployments in rural America has become a national priority. The White House recently declared that it is “the policy of the executive branch to use all viable tools to accelerate the deployment and adoption of affordable, reliable, modern high-speed broadband connectivity in rural America.”³ Though the 3.5 GHz Band was allocated for innovative broadband uses throughout the United States, the comment record in this proceeding demonstrates that the Commission’s proposed rule changes would harm the public interest by widening the digital divide

¹ RWA is a Washington, DC-based trade association that ensures wireless carriers with fewer than 100,000 subscribers have a strong voice in our nation’s capital. RWA’s members have joined together to speed the delivery of new, efficient, and innovative communications technologies to underserved rural communities across the United States of America. RWA’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone/broadband companies that are passionate about ensuring rural America is not left behind.

² *Promoting Investment in the 3550-3700 MHz Band; Petitions for Rulemaking Regarding the Citizens Broadband Radio Service*, GN Docket No. 17-258, RM-11788, RM 11-789, Notice of Proposed Rulemaking and Order Terminating Petitions, FCC 17-134 (2017) (“3.5 GHz NPRM”).

³ “Presidential Memorandum for the Secretary of the Interior, Supporting Broadband Tower Facilities in Rural America on Federal Properties Managed by the Department of the Interior,” (January 8, 2018); Exec. Order No. 13,821, “Presidential Executive Order on Streamlining and Expediting Requests to Locate Broadband Facilities in Rural America,” (January 8, 2018).

that plagues rural American communities. Indeed, and as detailed below, the Commission’s proposed policies would keep 3.5 GHz Band spectrum out of the hands of rural broadband providers and other stakeholders whose 3.5 GHz Band investments aim to bring new broadband services specifically to customers in rural areas. The Commission’s proposals to extend the PAL license term from three years without an expectation of renewal to ten years with an expectation of renewal to facilitate investment in the 3.5 GHz Band would, if adopted, inure mainly to the benefit of the largest wireless providers that primarily serve densely populated areas.

RWA, as well as other rural broadband providers and many new entrants to the wireless broadband space, have come forward in droves to comment on the extent to which they have already relied upon the Commission’s current rules and invested in the CBRS ecosystem. These rural and smaller-sized commenters also raise concerns that the Commission’s proposals to shift the 3.5 GHz Band’s localized PAL framework to the traditional expansive and long-term wireless licensing scheme would, among other things, place the spectrum under the control of a few wireless carriers, reduce the utility of the CBRS, and squander the opportunity to spur innovation and public interest benefits through widespread scaling of the industrial Internet of Things (“IoT”).⁴ The Commission should heed the fulsome comment record developed in this and related 3.5 GHz Band proceedings⁵ and either decline to adopt unnecessary, after-the-fact rule changes or adopt reasoned changes that account for and protect investments of rural broadband and innovative CBRS stakeholder interests.

⁴ Comments of the General Electric Company (“GE”) at i.

⁵ See generally, *Wireless Telecommunications Bureau and Office of Engineering and Technology Seek Comment on Petitions for Rulemaking Regarding the Citizens Broadband Radio Service*, GN Docket No. 12-354, Public Notice, DA 17-609 (rel. June 22, 2017) and *Amendment of the Commission’s Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 15-47 (rel. April 21, 2015) (“3.5 GHz R&O”); *Amendment of the Commission’s Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, Order on Reconsideration and Second Report and Order, FCC 16-55 (rel. May 2, 2016) .

I. RURAL BROADBAND PROVIDERS AND CBRS STAKEHOLDERS OVERWHELMINGLY OPPOSE THE LICENSING OF PALS ON A PARTIAL ECONOMIC AREA BASIS AS HARMFUL TO 3.5 GHZ INVESTMENTS.

Regarding PAL license size, RWA agrees with the host of rural broadband providers and CBRS stakeholders that urge the Commission to preserve the current census tract basis for PAL licenses and reject the use of Partial Economic Areas (“PEAs”).⁶ No commenter of record that represents rural broadband interests has expressly endorsed PEA-based licenses.

RWA agrees with WISPA that “small providers seeking to acquire PALs for small, target areas should not be forced to compete for PALs covering huge areas such as PEAs.”⁷ Auctioning PALs on a PEA basis is problematic as it would foreclose small companies from participating and leave a few large companies to “bid among themselves for increases to their rich portfolios of licensed spectrum.”⁸ Freezing out diverse applicants from the auction defeats not only the Commission’s purpose for the 3.5 GHz Band,⁹ but also violates the Commission’s public interest obligations provided in Section 309(j) of the Communications Act of 1934, as amended (the “Act”).¹⁰ Moreover, RWA agrees with WISPA that PEA-sized licenses would destroy investment, innovation and deployments made in reliance on the current rules.

To illustrate the size difference between PEAs and census tracts, WISPA notes that most PEAs generally have populations of over 100,000 whereas census tracts typically have populations of about

⁶ Commenters opposing the adoption of PEA-based PALs include, among many others, ATN International, Inc. (“ATN”); the Blooston Rural Carriers; Charter Communications, Inc. (“Charter”); Comcast Corporation (“Comcast”); the City of New York; Colorado Valley Communications Inc., Nortex Communications Company, and Pathway Com-Tel, Inc. (together the “Texas Carriers”); GE, Google LLC; Microsoft; NTCA—The Rural Broadband Association (“NTCA”); Nsighttel Wireless, LLC (“Cellcom”); the National Rural Telecommunications Cooperative (“NRTC”) and the National Rural Electric Cooperative Association (“NRECA”); Peoples Telephone Cooperative, Inc.; RWA; Sacred Wind Communications, Inc. (“Sacred Wind”); Southern Linc.; Transit Wireless, LLC; Vantage Point Solutions, Inc.; and Wireless Internet Service Providers Association (“WISPA”).

⁷ Comments of WISPA at 25.

⁸ *Id.*

⁹ 3.5 GHz R&O at ¶63 (an FCC goal for the 3.5 GHz Band was to foster innovation, encourage efficient use of the band, and create an environment conducive to a wide array of potential users and uses).

¹⁰ 47 U.S.C. § 309(j).

4,000. The PEA problem also exists in rural and lesser populated areas, as illustrated by WISPA using PEA278 in Southeast Kansas and Northeast Oklahoma. PEA278 has a population of 179,889 residing in 10 mostly rural counties and 60 census tracts. For a small business or rural provider seeking to serve customers within one or a few census tracts (e.g., to reach particular community districts or agricultural or industrial areas), having to purchase an oversized license and being forced to serve the entirety of PEA278 is a gross mismatch and ultimately would be a barrier to entry.

GE and Google LLC (“Google”) raise additional concerns about modifying the PAL size to PEAS, noting that such a modification would stifle development of industrial IoT, healthcare, and other non-traditional interests in the 3.5 GHz band, as such users would be unable to obtain geographically targeted, localized PAL spectrum at auction and likely could not economically justify investing in a PEA-sized license.¹¹ Though the Commission has been clear about promoting the 3.5 GHz Band for 5G network deployments, suddenly tipping the scales entirely towards 5G at the expense of other innovative uses would be a lost opportunity and would harm the investments made in reliance on the existing rules.¹²

RWA reminds the Commission that PEAs were adopted for use due to the complicated nature of the 600 MHz auction (which included both a reverse and forward auction) and the need to have fewer license areas than the 734 Cellular Market Areas (“CMAs”). When the Commission adopted PEAs as a compromise for the 600 MHz auction, it did so in order to keep “the number of total service areas...low enough to reduce the time necessary to complete the incentive auction”¹³ because “the time necessary to conduct the bidding increases exponentially as the number of licenses increase.”¹⁴ RWA, Competitive Carriers Association, NTCA, and the Blooston Rural Carriers put forward their joint PEA proposal in

¹¹ Comments of GE at 21-23 and Comments of Google at 5-14.

¹² Comments of WISPA at 14-21; Comments of RWA at 5-6.

¹³ *Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions*, GN Docket No. 12-268, Report and Order, FCC 14-50. ¶ 73 (rel. June 2, 2014) (“Incentive Auction Report and Order”).

¹⁴ Incentive Auction Report and Order at n.222.

order to address “unique concerns raised by the first-of-its-kind incentive auction for 600 MHz spectrum.”¹⁵ As noted at the time, “these issues do not arise, and therefore do not need to be solved, in the context of other spectrum auctions.”¹⁶ PEAs were intended to be a one-time solution to problems caused by a one-time event – the Incentive Auction. Given that a 3.5 GHz Band auction will not require both a reverse and forward auction and will not cause accompanying complications for auction participants, the use of PEAs is not warranted.

Should the Commission decide not to preserve census tracts, then it should consider one of the hybrid approaches that would allow census tracts in rural areas. For example, Sacred Wind, which serves Tribal communities in New Mexico, wishes to expand its 3650-3700 MHz Band (“3.65 GHz Band”) fixed wireless broadband network, but is concerned about the size and availability of PALs at auction and the costs associated with PAL licenses that are larger than census tracts and extend well beyond Sacred Wind’s service area. To the extent the Commission is adamant about increasing the size of license areas beyond census tracts, then Sacred Wind has requested that the Commission separately license PALs in urban areas using Metropolitan Statistical Area (“MSA”) boundaries, and license PALs within Rural Service Area (“RSA”) boundaries using census tracts.¹⁷ RWA is supportive of this hybrid approach and believes it to be a reasoned compromise. There are 306 MSAs in the United States,¹⁸ and each MSA wholly contains census tracts that could be available as its own license area leaving the remaining areas to be licensed by census tract.

Alternatively, Sacred Wind, RWA and other rural providers, including Cellcom, the Blooston Rural Carriers, and the Texas Carriers, have echoed support for counties as a reasonable alternative to census tracts. Cellcom highlights the quandary it would face in a PEA-sized PAL auction whereby it

¹⁵ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Ex Parte Presentation, 3 (March 11, 2014).

¹⁶ *Id.*

¹⁷ Together MSAs and RSAs comprise CMAs, which have served as the basis for several prior Commission auctions.

¹⁸ 47 C.F.R. § 22.909.

would either need to overspend in order to win a five-county PEA so that it can serve just two counties, or sit out the auction and await speculative access via the secondary market, a market that has been slow to nearly non-existent to develop when attempting to split apart larger license areas.¹⁹ The Blooston Rural Carriers argue that county-sized licenses would make it easier for small businesses and new market entrants to provide wide-area PAL service without the risk of losing access to PAL spectrum in one or more strategic census blocks, and also highlight that counties nest into all of the FCC’s larger geographic service areas including CMAs.²⁰ Non-rural providers, including Charter and Comcast also support county-based licenses.²¹

Another hybrid model for the Commission to consider is advanced by NTCA, NRTC, and NRECA. These rural interest groups specifically propose bifurcating PALs into two groups—a group of five PALs that would use county boundaries and a group of two PALs that would use census tract boundaries. The groups note that this blended approach has precedent (e.g., the FCC’s 700 MHz and AWS auctions used multi-sized licenses) and has been utilized with the aim of drawing investment from a diverse pool of bidders. Similarly, a hybrid proposal from Transit Wireless Transit Wireless, a neutral host operator that provides wireless and fiber-based communications services within the New York City subway system, would create two PAL types—a Small PAL based on census tracts and a Large PAL based on either CMA or PEA boundaries.²² Though Transit Wireless’ default position is to preserve census tract PALs, its hybrid proposal is meant to serve as an alternative to the “all-or-nothing” approach that was suggested in the Petitions for Rulemaking that gave rise to this proceeding.²³ Given the outpouring of support for census tracts or other license sizes smaller than PEAs and the plethora of hybrid license options proposed, the Commission should reject PEA-based PAL licensing.

¹⁹ Comments of Cellcom at 2-3.

²⁰ Comments of the Blooston Rural Carriers at 4.

²¹ See Comments of Charter at 2-4 and Comments of Comcast at 4-11.

²² Should the FCC consider Transit Wireless’ hybrid proposal, RWA encourages the FCC to use CMAs rather than PEAs.

²³ Comments of Transit Wireless at 2.

II. EVEN WITH MODIFIED AND STREAMLINED PROCEDURES, THE SECONDARY MARKET WOULD NOT BE A SUITABLE SUBSTITUTE FOR DIRECT SPECTRUM ACCESS OPPORTUNITIES AFFORDED BY SMALL LICENSE SIZE.

Some commenters, including CTIA and AT&T, believe that secondary markets have enabled the marketplace to determine the most effective use of spectrum and take the idealistic view that permitting partitioning and disaggregation will resolve concerns that PEA-based spectrum will be underutilized.²⁴ Verizon goes one step further and voices its support for “alternative changes to the PAL rules to facilitate an active secondary market and enable new entrant access (e.g., partitioning and disaggregation of license areas and ‘light-touch leasing’).”²⁵ In practice, however, the secondary market is not a reliable or sufficient resource for spectrum access. The fact that these mechanisms exist for entities that were unable to obtain PAL spectrum at auction does not automatically make such access sufficient. One need only review the FCC’s Universal Licensing System to see that partitioning and disaggregating licenses is not robust and that the secondary market works for consolidating spectrum in the hands of a few rather than dispersing spectrum among many.

RWA agrees with ATN that “smaller license areas provide significant benefits to smaller carriers and new entrants” and that “allowing larger license areas with the ability for secondary market transactions only puts more power in the hands of the four largest wireless providers [as] [t]hey would essentially be the gatekeepers for this spectrum, in violation of the Commission’s obligation under Section 309(j) to widely distribute such licenses.”²⁶ Section 309(j) of the Act specifically requires the FCC to ensure that spectrum is available to rural telephone companies and small businesses. Changing the licensing scheme to PEAs runs afoul of Section 309(j).²⁷ Leasing and partitioning are neither predictable nor effective means to provide small and rural entities with spectrum access needed for targeted, local deployments. Cellcom accurately characterizes partitioning as a viable solution “in

²⁴ Comments of AT&T at 8.

²⁵ Comments of Verizon at 6.

²⁶ Comments of ATN at 9.

²⁷ 47 U.S.C. § 309(j).

theory only,”²⁸ as there are no guarantees that any licensee will be willing to partition its spectrum or that they would offer reasonable terms and conditions to do so. Citing a report prepared in advance of the 600 MHz Incentive Auction, NTCA indicated that “there are many examples of large operators acquiring spectrum from smaller players... [but] little recent history of the larger carriers leasing, disaggregating or partitioning large sections of spectrum where they already had service.”²⁹ WISPA cites its own survey data supporting “the inconvenient truth” that “large wireless carriers are generally unwilling to make license spectrum available on the secondary market.”³⁰

As to what may be done, RWA agrees with ATN’s suggestion that, “[t]o the extent that the Commission decides to adopt larger geographic area licenses, and proceeds with a revision to the secondary market transaction rules, the Commission should implement an affirmative obligation for larger providers to engage in such transactions with smaller providers and new entrants.”³¹ Federated Wireless offers various suggestions to the Commission to streamline secondary market processing, maximize leasing flexibility, and even incentivize PAL licensees to engage in secondary markets transactions. Though worthwhile in their own right, efforts to improve secondary market processes and incentives would at best resolve red tape issues on the back end for those entities that were able to negotiate a PAL arrangement, but they would not holistically address the problem of spectrum access on the front end as required by Section 309(j) of the Act..

III. THE COMMENT RECORD DEMONSTRATES THAT PAL TERM LENGTH AND LICENSE RENEWAL MUST BE COUNTERBALANCED WITH REASONABLE PERFORMANCE STANDARDS TO PREVENT SPECTRUM FROM LYING FALLOW, PARTICULARLY IN RURAL AREAS.

The issue of PAL term length had been asked and answered since 2015, and RWA disagrees with AT&T’s assertion that “[o]nly by extending the current truncated license terms can the

²⁸ Comments of Cellcom at 3.

²⁹ Comments of NTCA at 6.

³⁰ Comments of WISPA at 43-44.

³¹ Comments of ATN at 9.

Commission encourage investment by PALs, equipment manufacturers, and end users alike.”³² Small and rural broadband providers have been able to make investment decisions related to the use of spectrum in short term license scenarios, while ensuring a reasonable return on investment. Until the day that T-Mobile and CTIA filed their Petitions for Rulemaking, broadband providers and other CBRS stakeholders were eagerly moving forward with investments under the current 3.5 GHz rules. These investments were driven by consumer demand, the availability of LTE-based and “CBRS ready” equipment, the superior propagation characteristics of the 3.5 GHz band itself, and reduced costs due to competition among equipment manufacturers.³³

However, to the extent that the Commission seems resolute on expanding PAL license size to something larger than census tracts, providers also must consider how term length, license renewal, and spectrum access issues will factor into their investment decisions. The Commission’s sudden proposal to more than triple the PAL license term length to ten years with an expectation of renewal and barely a notion of any performance (or buildout) requirements is troubling. RWA agrees with NTCA that “this proposal when combined with [the FCC’s] PEA geographic license size proposal would turn the CBRS spectrum into just another expensive spectrum band owned by nationwide incumbents who primarily focus upon urban and suburban populations.”³⁴ As the comment record demonstrates, RWA and other rural broadband interests call on the Commission to avoid this outcome by adopting reasonable restrictions with any extended PAL term length. Commenters generally support term lengths that fall between the current three years and proposed ten years³⁵ but with a limited or restricted renewal expectancy and in conjunction with meaningful performance (or buildout) requirements to promote

³² Comments of AT&T at 4.

³³ See Comments of WISPA at 18-20.

³⁴ Comments of NTCA at 9.

³⁵ See, e.g., Comments of RWA (supporting two five-year terms or renewal with keep-what-you-serve buildout); Comments of WISPA (urging retention of the current three-year term with no permanent renewal expectancy or buildout); Comments of Cellcom (supporting six-year terms provided that PALs are licensed on a smaller basis than PEAs); Comments of the Blooston Rural Carriers (supporting two five-year terms); Comments of NTCA (supporting two five-year terms).

spectrum efficiency.³⁶ The Commission should thoroughly consider all options raised in the comment record to ensure that rural broadband interests and innovative CBRS applications (e.g., agricultural management services, industrial IoT, healthcare) are not compromised. In no event, however, should the Commission use broad strokes to adopt ten-year terms with a permanent renewal expectancy and ineffectual or no performance requirements.

IV. CONCLUSION.

Rural broadband providers and CBRS stakeholders have spoken, and the wholesale licensing overhaul of PAL spectrum in the 3.5 GHz Band would do more harm than good. The Commission should not adopt the rule changes proposed in the NPRM as they are not needed to drive investment in the 3.5 GHz Band. Accordingly, the Commission should either preserve the currently adopted and affirmed 3.5 GHz Band rules or adopt well-reasoned rule changes that do not undermine current investments of rural broadband providers and CBRS stakeholders.

Respectfully submitted,

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³⁶ See, e.g., Comments of NRTC & NRECA (supporting ten-year terms with substantial service requirement and/or an economic buildout incentive such as a refund or bid credit in next auction); Comments of Transit Wireless (supporting three-year terms for Small PALs and seven- to ten-year terms for Large PALs, each with their own respective buildout requirements); Comments of the City of New York (calling for strong and enforceable geographic performance requirements using granular data similar to what is collected in FCC Form 477).